



## STATE OF WISCONSIN Division of Hearings and Appeals

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In the Matter of

Sawyer County Human Services Department, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 206503

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Pursuant to a petition filed October 6, 2022, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Sawyer County Human Services Department ("the agency") to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of one year, a hearing was held on Tuesday, December 13, 2022 at 08:30 AM by teleconference initiated from Madison, Wisconsin. The hearing was first scheduled for November 30, 2022. At the time of the hearing, Respondent was driving her daughter to daycare and then due at work but stated that she wished to participate in the hearing. The hearing was therefore rescheduled to accommodate Respondent's work schedule. Respondent did not however appear on that date.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Sawyer County Human Services Department  
10610 Main Street  
PO Box 730  
Hayward, WI 54843  
By: Stacy Kind

Respondent:

██████████  
██████████  
██████████

Did Not Appear

**ADMINISTRATIVE LAW JUDGE:**

Teresa A. Perez  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. The respondent (CARES # [REDACTED]) is a married resident of Wood County who was the primary person for a FS household that received benefits in Sawyer County from at least February 2021 through August 2022 with occasional gaps in benefits.
2. Respondent's FS household included her spouse, [REDACTED].
3. In September 2021, the agency mailed Respondent an Enrollment and Benefits booklet advising her of the penalties for providing false information to the agency.
4. In February 2022, Respondent filed an application for FS and completed a telephone interview during which she reported that she was employed by [REDACTED], earned \$12 per hour, and worked 37.5 hours per week. She reported no other household income.
5. By notice dated February 7, 2022, the agency informed Respondent that she and her spouse were eligible for FS as of February 2, 2022.
6. [REDACTED] began a new job with [REDACTED] in May 2022. He received a first paycheck on May 6, 2022 and a final paycheck on August 26, 2022 and was paid every week between those dates. His weekly gross earnings during that time period ranged from \$430.50 to \$1,076.25.
7. On July 8, 2022, Respondent filed a six month report form via the on-line ACCESS web portal. The respondent did not report that her spouse had begun a new job in May 2022 and did not report any increase in household income. She signed that form thereby certifying, under penalty of perjury, that her answers were correct and complete to the best of her knowledge.
8. On September 22, 2022, the agency mailed Respondent a Waiver of Administrative Disqualification Hearing and a letter advising her that it believed she intentionally concealed facts by not reporting her spouse's income on the July 2022 six month report form and that the agency was seeking to disqualify her from receiving FS for one year as a result. In addition, an agency worker called Respondent on September 22, 2022 and October 6, 2022 and left voice mail messages each time requesting that Respondent call to discuss that paperwork. Respondent did not call the agency to discuss or dispute the agency's finding at any time.
9. On October 7, 2022, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that Respondent failed to report that [REDACTED], her spouse, was working at [REDACTED] when she completed a Six Month Report Form in July 2022. The hearing notice advised Respondent that a hearing would occur by telephone on November 30, 2022 at 9:00AM.
10. On November 30, 2022 at the time of the scheduled hearing, Respondent answered her phone, stated that she was driving with her daughter in the car and en route to work. She stated a desire to participate in the hearing and explained that she was typically available on Tuesdays because that was her day off. Accordingly, the hearing was rescheduled to Tuesday, December 13, 2022.
11. The Division of Hearings and Appeals mailed the respondent a notice informing her that the rescheduled hearing would occur by telephone on December 13, 2022 at 8:30AM. That hearing notice was not returned by the U.S. Postal Service.
12. The respondent failed to appear for the scheduled December 13, 2022 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.

## DISCUSSION

An intentional program violation (IPV) of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts;  
or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

*FoodShare Wisconsin Handbook*, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 946.92(2).

An individual who commits an IPV can be disqualified from participation in the FoodShare (FS) program. The length of the disqualification period depends, in part, on the nature of the IPV. See 7 C.F.R. § 273.16(b). Generally, an individual will be disqualified for twelve months after committing her or his first IPV. See 7 C.F.R. § 273.16(b)(1)(i). *The petitioner/agency can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Although other adult family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter.* 7 C.F.R. § 273.16(b).

An IPV can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing. *FoodShare Wisconsin Handbook* § 3.14.1. When an administrative disqualification hearing is scheduled, it must proceed even if the respondent cannot be located or fails to appear without good cause. See 7 C.F.R. § 273.16(e)(4). As detailed in Findings of Fact Nos. 9 – 12, the respondent in this matter did not appear. Therefore, I must determine whether the respondent committed an IPV based solely on the evidence that the petitioner presented at hearing.

To prevail at an administrative disqualification hearing, the petitioner seeking to establish that a FS recipient has committed an IPV must prove the following two separate elements through the presentation of clear and convincing evidence: (1) the recipient committed a program violation; and (2) the recipient intended to commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

*Kuehn*, 11 Wis.2d at 26.

*Wisconsin Jury Instruction – Civil 205* is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this

burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong) gen. ed., 4<sup>th</sup> ed. 1992.

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence a firm conviction as to the existence of each of the two elements even though there may be a reasonable doubt as to their existence.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. *See, John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

The agency contended that Respondent intentionally withheld or misrepresented facts by failing to report her spouse’s new employment at [REDACTED] and the resultant increase in household income when she completed and filed a six month report form in July 2022.

The agency’s well-presented case included copies of Respondent’s pay history that it received from [REDACTED]; CARES case comments that document contacts between the agency and the Respondent and attempts by the agency to contact Respondent from September 8, 2021 through November 1, 2022; the July 2022 six month report form filed by Respondent; and a case summary detailing the income she reported when she applied for FS in February 2022.

The documents offered by the agency together show that after filing an application for FS in February 2022 but prior to the date Respondent filed a six month report form with the agency, her spouse had gained employment and that he had been receiving significant, weekly pay from that employer since May 2022; yet, she did not report any changes in household income on the six month report form that she filed in July 2022. Unlike failing to report income increases or changes in employment between renewals, which can at times be chalked up to oversight, negligence, or forgetfulness, the misrepresentation or withholding of information when completing a six month report form is persuasive evidence that an individual intentionally omitted information for the purpose of receiving benefits to which they were not entitled.

I also note that the agency reached out to Respondent by telephone twice prior to the hearing to discuss its intentional program violation finding and that she never replied. It is reasonable to infer that if she did not intentionally withhold information, she would have been anxious to respond to the agency’s calls so that she could dispute the agency’s action. The respondent also did not appear at the hearing, despite the hearing being rescheduled to accommodate her work schedule, to refute the agency’s contention that her failure to report her spouse’s new employment and the household’s resultant increase in income constituted an intentional misrepresentation or omission of information. And, there is no evidence in the record to suggest that her failure was inadvertent.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules, and that this violation was the first such violation committed by the respondent. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for one year.

## CONCLUSIONS OF LAW

1. The respondent misrepresented, concealed or withheld facts by failing to report her spouse's employment and wages when completing a FS six month report form in July 2022; she thus committed an intentional program violation as that term is defined in 7 C.F.R. § 273.16(c)(1).
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

**NOW, THEREFORE,** it is

**ORDERED**

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for one year, effective the first month following the date of receipt of this decision.

## **REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR**

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

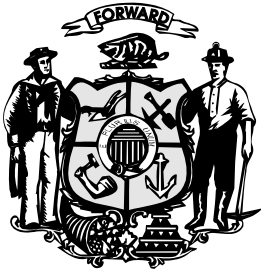
Given under my hand at the City of Madison,  
Wisconsin, this 9th day of January, 2023



\sTeresa A. Perez  
Administrative Law Judge  
Division of Hearings and Appeals

c: Northern Consortium - email  
Public Assistance Collection Section - email  
Division of Medicaid Services - email  
Leanna Becker - email  
Shawna White - email





## **State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 9, 2023.

Sawyer County Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability

[REDACTED]

[REDACTED]